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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10 041,059	01/07/2002	Dietrich Schmidt	21209 PUS	1962

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EXAMINER

LIN, TINA M

ART UNIT	PAPER NUMBER
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2874

DATE MAILED: 03/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/041,059

Applicant(s)

SCHMIDT ET AL.

Examiner

Tina M Lin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8 and 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of copending Application No. 10/041,008. Although the conflicting claims are not identical, they are not patentably distinct from each other. In the co-pending application, the independent claim, claim 1, discloses a quadrangular mixing rod with an inlet and outlet area, to guide light through the inlet area to the outlet area to illuminate a quadrangular field where the angles of the quadrangular inlet and outlet areas have one or two angles to be 90° and the others to be at an angle not to be 90°. In the current application, claim 1 discloses all that the co-pending application does except the current application discloses an angle of the quadrangular inlet or outlet area to not have an angle of 90°. Since both applications disclose an angle in the quadrangular mixing rod not to be 90°, the current application does not specify an angle measurement, and the current application does not state an additional angle can not be 90°, it

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would have been obvious at the time the invention was made to a person having ordinary skill in the art that a light mixing rod with a quadrangular illuminating field claimed in the current application states the same basic angle restrictions as the light mixing rod in the co-pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by International Publication Number WO 01/82632 A1 to Infocus Corporation. Infocus Corporation discloses a mixing rod with a quadrangular inlet and outlet to guide light from the inlet area to the outlet area with an angle not equal to 90° and a cross-sectional area that converges at the same angles at the inlet area and the outlet area. Additionally, Infocus Corporation discloses a projection device, which generates the illuminating field to form an image.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over International Publication Number WO 01/82632 A1 to Infocus Corporation. Infocus discloses all of the above in claim 1, but fails to disclose a different angle for each of the corners of the quadrangular mixing rod. However, Infocus Corporation does disclose in Figure 8a-h different angles. However, Infocus Corporation only discloses whether each angle is an obtuse, right or acute angle. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have assigned different angle values to each angle as long as the shape remained a quadrangular shape with the angles totaling 360 degrees.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over International Publication Number WO 01/82632 A1 to Infocus Corporation as applied to claim 1 above, and further in view of U.S. Patent 6,443,576 B1 to Nishida et al. Infocus discloses all of the above in claim 1, but fails to disclose a solid mixing rod made of a light transparent material or a hollow mixing rod with four reflective surfaces inside. Nishida et al does disclose light being transmitted through a light transmitting rod being reflected off the inner surfaces. Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have reflective surfaces inside the rod in order for the light be reflected

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off the interior surfaces. It would have also been obvious at the time the invention was made to a person having ordinary skill in the art to have used any material optimally suitable for the particular purpose the mixing rod is intended for, such as a light transparent material, since the purpose of the mixing rod is to transmit light through the inlet area and out the outlet area.

The documents submitted by applicant in the Information Disclosure Statements have been considered and made of record. Note attached copy of forms PTO-1449.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Reference A and B discuss light mixing rods or light transmitted rods. Reference C is the co-pending application of this application. References D and F discuss optical fibers, projectors and light guides.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tina M Lin whose telephone number is (703) 305-1959. The examiner can normally be reached on Monday-Friday 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (703) 308-4819. The fax phone numbers for

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the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

TML *TML*
March 18, 2003

John D. Lee
John D. Lee
Primary Examiner